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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Directive of the European Parliament and of the Council on combating money laundering by criminal law **(first reading)**
- Adoption of the legislative act
- Statement

DECLARATION BY THE CZECH REPUBLIC, THE FEDERAL REPUBLIC OF GERMANY, THE HELLENIC REPUBLIC AND THE REPUBLIC OF SLOVENIA

The Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia support the aim of the Directive of the European Parliament and of the Council on combating money laundering by criminal law (the Directive) to strengthen the fight against money laundering by means of criminal law.

However, the Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia would like to highlight their concerns regarding Article 3(3)(c) and (4) of the Directive. Under this provision, Member States have to criminalize the laundering of property derived from conduct that took place in another jurisdiction, even if such conduct is not a criminal offence in that jurisdiction. This provision is applicable to conduct according to point (a) to (e) and (h) of point 1 of Article 2 which Member States are required to criminalize under EU law. Given, however, that third countries are not bound by EU law and may not have criminalized such conduct, the provision can result in the criminalization of transactions regarding property legally obtained in a third country which raises serious concerns.

It is the opinion of the Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia that dual criminality in these cases, i.e. the requirement that predicate conduct be criminalized in both, the jurisdiction where it took place and (had it occurred there) the jurisdiction where the money laundering is committed, is necessary for the proportionality of a criminal offence and penalty according to the fundamental principles that constitutes a common constitutional tradition of the Member States and Article 49 of the Charter of Fundamental Rights of the European Union.
